

**MEMORANDUM ENDORSEMENT APPROVING PROPOSED NET EQUITY
ARGUMENT OUTLINE SUBMITTED BY THE LAW FIRMS OF DAVIS POLK &
WARDWELL, LLP, *et al.***

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**NET EQUITY ARGUMENT OUTLINE SUBMITTED BY THE LAW FIRMS OF DAVIS
POLK & WARDWELL, LLP, *et al.***

- I. K. Wagner (20 minutes)
 - A. Statutory definition of “net equity” controls
 - B. *New Times* controls
 - C. Legislative history / purpose of the statute / statute contemplates customer protection even when the broker is fraudulent
 - D. SIPC’s subrogation argument conflicts with the priority scheme set forth in the statute
 - E. “Cash-in/cash-out” requires the exercise of avoidance powers that the Trustee does not have
- II. D. Glosband (15 minutes)
 - A. Section 8(b) “books and records” argument is wrong
 - B. Ponzi scheme cases relied on by the Trustee and SIPC are inapplicable

- C. Trustee's fictitious market/false profits argument is wrong
- D. Impact on Trustee's avoidance power cannot affect interpretation of "net equity"
- E. Trustee's imputation and illegal contract arguments are wrong
- III. H. Chaitman (10 minutes)
 - A. "Net losers" are also injured by the Trustee's definition of net equity
 - B. SIPC is the principal beneficiary of the Trustee's approach
- IV. B. Neville (10 minutes)
 - A. SIPC's prior positions / investor reliance and expectations
- V. M. Gluck (10 minutes)
 - A. Trustee's "cash-in/cash-out" approach is unworkable and not what it has been represented to be
- VI. S. Fishbein (10 minutes)
 - A. Non split strike customers
- VII. C. Neville (5 minutes)
 - A. Scope of relief requested

Memorandum Endorsement Approving Proposed Net Equity Argument Outline Submitted by the Law Firms of Davis Polk & Wardwell, LLP, et al., January 25, 2010

The proposed net equity argument outline submitted by the law firms of Davis Polk & Wardwell, LLP, et al., is approved. *See also Memorandum Endorsement Approving Submission of Trustee, SIPC, and SEC Regarding Net Equity Hearing.*

Dated: New York, New York
January 25, 2010

/s/ Burton R. Lifland
Hon. Burton R. Lifland
United States Bankruptcy Judge